

The meeting opened at 6:30 p.m.

Present were: Brown (Chair); Magenheim (Clerk); McDonough (Member); Oltman & Wilson (Associate Members).

Rechisky arrived at 6:40 pm.

**Petition No.: Z-14-135**

**Premises affected: 115 Corbett Street**

**Petitioner: Raleigh**

**Relief Requested: special permit under Art. VIII, §3.3.5 &/or for a variance from Art. VIII, §4.1.2 to raze an existing single family dwelling & construct a new one on a lot that lacks the minimum required frontage**

**Present were: Brown (Chair); Magenheim (Clerk); Oltman & Wilson (Associate Members).**

A request to continue the public hearing without opening to 12/4/14 was received 11/17/14 from Attorney Mark Johnson on behalf of the applicant. Magenheim made a motion to continue the hearing to 12/4/14. Oltman seconded the motion & the Board voted (4-0) to continue without opening to 12/4/14.

**Petition No.: Z-14-106**

**Premises affected: 290 Lowell Street**

**Petitioner: O'Brien Homes**

**Relief Requested: Variances 4.1.2, 7.9.4.2, 7.9.4.3.b & Special Permit 7.9 &/or 3.3.5 to subdivide a lot with an historic home into 2, both lots will be undersized & the historic home does not meet the minimum front setback**

**Present were: Brown (Chair); Magenheim (Clerk); McDonough (Member); Oltman & Wilson (Associate Members, sitting in place of Bargnesi & Boness).**

Attorney Mark Johnson submitted a packet regarding the unique circumstances, specifically the taking of land, resulting in the loss of lot area, rendering it impossible to comply with the area requirement. This justifies the granting of a variance, in his opinion, and a finding under 4.1.3.4 of the bylaw. Johnson argued that each lot needs only 15,000 sq. ft. of area. He noted that he has asked Town Counsel Attorney Thomas Urbelis for his interpretation, but has not received a response yet. The packet also included information on dimensional requirements & a letter from the Inspector of Buildings. Designer Mark Yanowitz gave an overview of the proposed alterations to the existing, historic structure, & submitted plans denoting the changes. The Board discussed how much of the existing foundation / structure will remain, the history of the house, proposed alterations for code compliance, and the interior layout. Maureen Hanley, a Licensed Soil Evaluator & Soil Scientist with Norse Environmental, submitted a plan depicting the test pits from May 2014 & explained the soil conditions: sandy soils, 3-4' water table. The Board discussed the water table, infiltration & any effect on abutting lots. Hanley stated that the soil works well with infiltration. French drains will be installed to decrease flooding & infiltration will handle the water. Soils on abutting lots are worse & the proposed construction will not cause flooding on them. The Board discussed the requested relief for the existing house's front setback, which Johnson pointed out does not meet any dimensional requirement of the bylaw. There was no traffic analysis done since only 4 cars fit in the driveway & garage. Karen Herman, of 50 Sunset Rock Rd., Chair of the Preservation Commission, reviewed the history of the house, the importance of such special permits preserving historic structures and the fact that this proposal meets the qualifications of the Dimensional Special Permit for Historic Preservation. Brown inquired what actions have been taken by the Preservation Commission regarding this property under the Demolition Delay bylaw. None have been taken. Johnson suggested that this type of special permit is an incentive to renovate historic properties & the process includes review by the Preservation Commission. If there is no recommendation, then the applicant cannot request a special permit from the ZBA. It is only after the ZBA grants said special permit that the restriction is reviewed/approved by the State Historic Commission. He argued that there would be far fewer applications for these

special permits if one of the lots had to comply with the zoning district's dimensional requirements since there are few large lots with historic structures left. James Tamaro, direct abutter at 143 Lovejoy Rd., in reference to a 2004 letter from the Preservation Commission Chair, argued that these special permits are intended for the relocation of historic buildings, not for the construction of new dwellings. He voiced opposition stating that there is no hardship that isn't self-imposed by the applicant. He urged the Board & Preservation to preserve the feeling of the town by not cramming houses onto smaller lots. The ZBA is not required to grant the special permit. He reminded the Board of the letter of opposition from abutters submitted on 9/4/14. Tamaro asked about the potential displacement of water with two new basements proposed. Maureen Hanley explained that the water will go back into the ground via rooftop infiltration, gutters and recharging it back into the ground. There being no other questions or comments from the public or Board, Brown read into the record the following documents:

1. Table of Dimensional Special Permits for Historic Preservation permits issued,
2. Transcript of April 2003 Town Meeting Article regarding Dimensional Special Permit bylaw adoption, including Karen Herman's testimony on use of this bylaw to move historic structures for preservation,
3. Letters between David Brown & Town Counsel dated 10/6/14, 10/7/14 in which Town counsel agreed that the second lot needs to meet the zoning district's dimensional requirements,
4. Steven Colyer, former Director of Planning's letter of 9/30/03 to then ZBA Chair Daniel Casper & Karen Herman regarding 373 S. Main Street (creation of Lot A rendering Lot B non-conforming & parent lot must comply with the zoning district's dimensional requirements),
5. Mark Johnson's letter of 11/6/13 to the ZBA regarding both lots being encumbered by preservation restrictions, in violation of zoning,
6. Karen Herman's letter to the Board of Selectmen dated 7/30/04 regarding Article 29 to create special permits to allow the preservation of historic structures in situ or in a new location.

Johnson informed the Board that he is awaiting clarification from Town Counsel of his letter dated 10/6/14 between the intent of the bylaw is and what it actually states. Johnson argued that the intent & purpose is to allow the ZBA to modify dimensional requirements, including area, using the second lot as a carrot. Johnson agreed that the requested variances are for lot area & front setback, in addition to the special permit. He reiterated the hardship related to the preservation of the historic house & the cost involved in renovation exceeding a simple sale price (financial hardship alleviated by the 2<sup>nd</sup> lot/house). McDonough made a motion to close the public hearing. Magenheim seconded the motion & the Board voted (5-0) to close the hearing. The Board will attempt to find a date to deliberate prior to 12/4/14. Johnson granted an extension until 12/14/14.

**Petition No.: Z-14-137**

**Premises affected: 166 Salem Street**

**Petitioner: PWI Andover**

**Relief requested: modification of #2739 &/or variances from §3.1.3.C.7, §3.1.3.C.19, §3.3.2 & §5.2.5 to allow continued existence of a motor vehicle service station; modification to an existing freestanding sign; the sale of food items, lottery tickets & convenience store merchandise.**

**Present were: Brown (Chair); McDonough (Acting Clerk); Bargnesi (Member); Oltman & Rechisky (Associate Members, sitting in place of Magenheim & Boness).**

Attorney Peter Caruso submitted a request that the petition be withdrawn without prejudice. The Board voted unanimously (5-0) to allow the decision to be withdrawn without prejudice.

**Petition No.: Z-14-158**

**Premises affected: 166 Salem Street**

**Petitioner: PWI Andover**

**Relief requested: modification of #2739 &/or a special permit §3.3.2 &/or variance §3.1.3.C.19, 3.1.3.C.20, & 4.1.5.2 to allow continued existence of a motor vehicle service station; motor vehicle repair garage & modification of #2371 & 2239 &/or variances §5.2.5 to modify an existing sign**

**Present were: Brown (Chair); Magenheim (Clerk); McDonough (Member); Oltman & Rechisky (Associate Members, sitting in place of Bargnesi & Boness); Wilson (Associate Member / Alternate).**

Attorney Peter Caruso represented the applicant's request for a modification of Decision Numbers 2739, 2371, 2239 which have an ownership condition restricting the use to a specific owner. The current owner, Getty, wants to lease-to-buy with PWI. The only proposed changes are the name of the owner / station and the existing sign faces. There will be no additions / alterations to the property, no increase in lighting, no vehicle sales, and no loud speakers. There will still be only one tow truck. The currently approved hours of operation, 7 a.m. – 10 p.m., will be changed to 6 a.m. – 10 p.m. Caruso noted that the immediate abutter requested removal of some particular trees, which have been tagged, as well as a 6' solid vinyl privacy fence. He submitted a picture of the fence. Regarding the canopy overhanging the right of way in Decision #2239 – air rights have been granted by the State. Caruso pointed out the hardship of the triangular-shaped lot virtually eliminating any residential use of the lot, which has been used as a gas station & repair shop since the 1930's. The proposed continued use is not a substantial detriment; it serves public convenience and welfare and increases security due to the lighting. Phillip Sewall, of Getty Properties, LLC, confirmed that the gas station has not been in operation for a while. Getty intends to enter into a long term lease in order to re-open the business. Sewall explained that the pumps being in the right of way is common and has been allowed since the 1930's at this location. Paul Minicello, of PWI Andover, informed the Board that his other gas stations located on Routes 24, 128 & 95 all have pumps in the right of way. There being no other questions or comments from the Board or the public, McDonough made a motion to close the public hearing. Oltman seconded the motion & the Board voted unanimously to close the hearing.

Brown suggested voting generally to approve the relief necessary to allow the station to continue operation, draft the decision and then approve at a later date. Rechisky made a motion to vote that the sense of the Board is to approve the requested relief subject to final approval of a draft decision allowing the continued operation of the gas station. Magenheim seconded the motion & the Board voted (5-0) that the sense is to approve the requested relief, draft a decision & approve it at a later date.

**Petition No.: Z-14-147**

**Premises affected: 211 Andover Street**

**Petitioner: Haley**

**Relief requested: variance from Art. VIII, §4.1.2 &/or special permit §3.3.5 to construct additions/alterations that will not meet the minimum front setback requirement**

**Present were: Brown (Chair); Magenheim (Clerk); McDonough (Member); Oltman, & Wilson (Associate Members sitting in place of Boness & Bargnesi); Rechisky (Associate Member / Alternate).**

Contractor, William Foster, of Cote & Foster, represented Mr. & Mrs. Haley, who were also present. They wish to add / alter the existing, non-conforming single family dwelling, part of which will come closer to the front lot line by 4'. The existing, historic house is set back 10.57'. The proposed addition will be set back 14.57'. While the rear setbacks are significant, there is a large slope & retaining wall in the rear yard that limits extension to the rear. There were no questions or comments from the public & no further questions from the Board. Magenheim made a motion to waive a site view & close the public hearing. McDonough seconded the motion & the Board voted (5-0) waived the view & closed the hearing. The Board then proceeded to deliberate.

The Board voiced their support of the proposed additions / alterations and that the proposal meets the criteria for a special permit under 3.3.5 while not creating any new non-conformity. Oltman made a motion to approve the special permit & deny the variance as moot. McDonough seconded the motion & the Board voted (5-0) to grant the special permit & deny the variance with the usual conditions of conformance with the plot plan & drawings submitted. Oltman will write the decision.

**Petition No.: Z-14-153****Premises affected: 89 Main Street****Petitioner: Uburger****Relief requested: special permits §3.1.3.C.12.b to operate a fast food restaurant & §3.1.3.F.8 to allow outdoor seating****Present were: Brown (Chair); Magenheim (Clerk); McDonough (Member); Rechisky & Wilson (Associate Members sitting in place of Boness & Bargnesi); Oltman (Associate Member / Alternate).**

Jim Chen, representative of the applicant, JC Monkey King Corp., was present. He is the operator of Uburger wishing to open in Andover. There have been several special permits granted for the same use at this property for other businesses. There will be 46 seats inside, 10 seats outside. The menu consists of burgers, salads, chicken sandwiches, fries, drinks, & beer. They will be open from 11 a.m. until 11 p.m. 7 days per week. Deliveries are received via the back hallway, not on Main Street. It is typical to have approximately 40% of business as take-out orders. The Board discussed their concerns with the increased density of restaurants on Main Street increasing traffic and trash. Chen clarified that meat & bread are delivered daily; all other products are delivered two times per week prior to 9 a.m. in a small truck. There will be no walk-up window service. There being no other questions or comments from the public or the Board, Wilson made a motion to close the hearing. McDonough seconded the motion & the Board voted (5-0) to close the hearing. The Board then proceeded to deliberate.

McDonough made a motion to approve the special permits for fast food restaurant & outdoor seating with the conditions that there will be a maximum of 10 outdoor seats per plan with adequate space for pedestrians to pass. Wilson seconded the motion & the Board voted (5-0) to approve the special permits with conditions. Wilson will write the decision.

**Petition No.: Z-14-144****Premises affected: 321-329 Lowell Street****Petitioner: Lupoli****Relief requested: Modification of Decision #3978 &/or variances from Art. VIII, §4.1.2, 5.1.5.2.b & 5.3.4 &/or for special permits under Art. VIII, §3.1.3 to construct an office building that will not meet the minimum side or rear setback requirements, nor the minimum parking setback, nor the minimum landscape setback****Present were: Brown (Chair); Magenheim (Clerk); McDonough (Member); Oltman, & Wilson (Associate Members sitting in place of Boness & Bargnesi); Rechisky (Associate Member / Alternate).**

Present were Sal Lupoli, owner/applicant; Rick Friberg, project engineer; & Attorney Doug Hausler. Lupoli gave an overview of the project to construct a second medical office building that will not meet the setbacks for building, parking or landscaping. The proposed rear setback is 4' where 12' is required for landscape separation between parking & lot lines. Hausler explained that the hardship is the unique shape of the lot and the limited uses allowed in the Limited Service District. Brown asked them to address the requested variance from 5.1.5.2.b. It is the setback from the lot line between Tower I & II. Brown suggested a condition of approval that the lots shall be merged. Hausler & Friberg agreed to such a condition. The second variance request is for a 4' setback at the rear lot line by the dumpsters where 5' is required. Friberg explained that the hardship is due to emergency egress at the rear of the building in order to allow a

buffer so occupants wouldn't step directly into the drive aisle. The bylaw requires a 24' aisle & 16' deep parking spaces, thus a 4' setback is needed to maintain the drive aisle width. The Board discussed fencing & shrub buffers along lot lines, section 5.3.4. Hausler explained that strict compliance would significantly inhibit traffic flow on site. Friberg noted that 5.3.4 is unique to the Limited Service District. They have spoken with Hamilton Green Apts., rear abutter. They voiced no concerns and were not present at the hearing. Friberg informed the Board that the traffic light is scheduled to be installed prior to occupancy of the Andover Apts. at Rolling Green. It will be operational in Fall 2015. The traffic report was peer reviewed by the Planning Board for Andover Apts. There being no other questions or comments from the Board or the public, Wilson made a motion to waive a site view & close the public hearing. Magenheim seconded the motion & the Board voted (5-0) to waive the view & close the hearing. The Board then proceeded to deliberate.

Brown suggested that it would be cleaner to make the appropriate finding to issue a new variance & to modify the plan references rather than modifications of the prior decision with the condition that the work is done in conformance with the plans submitted and that the lots shall be merged prior to the issuance of a certificate of occupancy. McDonough made a motion to grant the requested variances & special permit and to modify Decision No. 3978 as appropriate. Wilson seconded the motion & the Board voted (5-0) to grant the variances & special permit with conditions. McDonough will write the decision.

**Petition No.: Z-14-154**

**Premises affected: 323 Lowell Street**

**Petitioner: Lupoli**

**Relief requested: variance §5.2.11 &/or a special permits §5.2.11.1.b & §5.2.11.4 to erect 5 signs, exceeding the total allowable signs & sign area**

**Present were: Brown (Chair); Magenheim (Clerk); McDonough (Member); Oltman, & Wilson (Associate Members sitting in place of Boness & Bargnesi); Rechisky (Associate Member / Alternate).**

Jay Kahn, of The Sign Center in Haverhill, presented the request to erect three free-standing signs, exceeding the maximum number of signs and sign area. Also in attendance were Sal Lupoli, Rick Friberg, project engineer; & Attorney Doug Hausler. Kahn reviewed the site plan depicting the sign locations. The requested relief is for one directional sign at the driveway off of Lowell Street, the tenant sign (directory) and a wall sign to face Route 93. It is possible that more signs will be added to the pylon sign depicted in the renderings submitted with the application. Kahn noted that only the letters on the pylon would be illuminated. Brown noted that internal illumination is prohibited. Brown also noted that Section 5.2.11.1.b allows a special permit to be granted for a larger sign on a high-speed limited access highway. However, the proposed sign is not facing the highway. The Board discussed the size of the lettering & signs, the orientation of the signs, the change in grade from Rt 133 to the sign, and illumination (directional sign is not illuminated). They also discussed the size of the attached sign facing the on-ramp to Route 93. Lupoli agreed to decrease the sign area to 25 sq. ft. instead of the proposed 26 sq. ft. Kahn suggested that the hardship is related to the campus. Kahn informed the Board that they would have to return for additional signage. Brown asked for a comprehensive request for the entire complex. The Board discussed the proportion of the proposed signs in relation to the building size & proximity to the roadways, as well as the definition of sign area & the restriction of the 2<sup>nd</sup> sign being the name of the principal tenant. The Board felt the need to view the site in order to get a better sense of the proposal. Brown asked the Board members to drive by individually. He also requested renderings / photos simulations for the street and a vision of the overall site signage. Lupoli conceded to relocate the Tower II sign. Brown suggested that the hearing be continued to December in order to draft findings, clarify lighting and mock-up signs. Magenheim made a motion to continue the hearing to December. The Board voted unanimously to continue the hearing to the December meeting.

Approval of Minutes

1/25/12 – McDonough made a motion to approve the minutes of 1/25/12. Magenheim seconded the motion & the Board voted to approve the minutes. Wilson abstained from the vote.

10/2/14 – Oltman made a motion to approve the minutes of 810/2/14 as revised by Brown & Bargnesi. Magenheim seconded the motion & the Board voted to approve the minutes. Wilson abstained from the vote.

There being no other business of the Board, Magenheim made a motion to adjourn the meeting. Wilson seconded the motion & the Board voted unanimously to adjourn the meeting at 10:45 p.m.